

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. _____

IN RE:

Application of MIDLANDS UTILITY, INC.,)	
Requesting approval of a Wholesale Bulk Wastewater)	APPLICATION
Agreement with the TOWN OF LEXINGTON and)	
Expansion of service area)	

Pursuant to S.C. Code Ann. §58-5-210 and 26 S.C. Code Ann. Regs. 103-503 and 103-541 Midlands Utility, Inc. ("Applicant") does hereby request the South Carolina Public Service Commission ("Commission") to determine whether a certain Bulk Wholesale Wastewater Agreement to be entered into with the Town of Lexington ("LEXINGTON") is in the public interest and if in the public interest, to approve the terms of the Wholesale Bulk Wastewater Agreement and to authorize Applicant to comply with the terms required thereby. The Applicant would show as follows:

APPLICANT

1. Applicant is a privately owned utility currently authorized to operate certain wastewater treatment facilities and sewer systems under the jurisdiction of the Commission, in Fairfield, Lexington, Orangeburg and Richland Counties. In particular, Midlands serves approximately (566) residents and or businesses in and near the Town of Lexington, in Lexington County.

2. Midlands is a public utility as defined by S.C. Code Ann. §58-5-10 (4), under the jurisdiction of the Commission pursuant to S.C. Code Ann. §58-5-210 and S.C. Code Ann., Regs. R 103-503 and 103-541.

3. Midland's office is located at 816 East Main Street, Lexington, South Carolina with a mailing address as follows:

Midlands Utility, Inc.,
ATTN: Keith G. Parnell, President
P. O. Box 887
Lexington, South Carolina 29072

TOWN OF LEXINGTON

4. Town of Lexington ("LEXINGTON") is a municipality incorporated under the laws of the State of South Carolina and is located in the County of Lexington, South Carolina.

5. LEXINGTON provides water and wastewater services to its residents and businesses located within its designated wastewater management area and within Midlands' service area on the 208 Water Quality Management Plan maps on file with the Central Midlands Regional Council of Governments ("COG").

WHOLESALE WASTEWATER AGREEMENT

6. Midlands proposes to provide sewer service to a parcel of property just east of Interstate 20, and on the north side of U.S. Highway 378 east of the Town of Lexington.

7. Midlands proposes to enter into a Bulk Wholesale Wastewater Agreement with LEXINGTON, which is subject to the approval of this Commission, the terms of which require, *inter alia*, that LEXINGTON accept wastewater from customers in the Town of Lexington. After connecting to LEXINGTON'S wastewater force main system, Midlands will provide collection-only services to its customers in the parcel of property identified in Paragraph 6

property identified in Paragraph 6 above. By the terms of the agreement, LEXINGTON will charge Midlands a wholesale rate for the transportation and treatment of its wastewater. The initial wholesale flat rate of \$3.45 per 1,000 gallons will be charged for wastewater customers. A proposed copy of this WHOLESale WASTEWATER AGREEMENT is attached and incorporated herein as "EXHIBIT A".

8. Lexington has the capacity to enter into agreements for wholesale services to Midlands as exhibited by the correspondence of The Honorable Randy Halfacre, Mayor of the Town of Lexington, dated May 28, 2009, attached and incorporated herein as "EXHIBIT B"

9. Copies of all pleadings, orders or correspondence in this proceeding should be served upon the attorneys listed below:

Elliott & Elliott, P.A.
Charles H. Cook
Scott Elliott
721 Olive Street
Columbia, S. C. 29205
Tel: 803-771-0555
Fax: 803-771-8010

WHEREFORE, Midlands Utilities, Inc. Respectfully requests that this Commission:

- a. determine whether the proposed Wholesale Wastewater Agreement between Midlands Utilities, Inc. and Town of Lexington is in the public interest, and if in the public interest, approve the terms of the Wholesale Wastewater Agreement, the necessary expansion of service area, and authorize Midlands to comply with the terms required thereby and to charge the fees set out therein consistent with its tariff and with the Commission's statutes, regulations and orders appertaining thereto; and

b. Grant such other and further relief as this Commission deems fit and proper.

Respectfully submitted,

ELLIOTT & ELLIOTT, P.A.

A handwritten signature in cursive script, appearing to read "Charles H. Cook", is written over a horizontal line.

Charles H. Cook, Esquire
Scott Elliott, Esquire
721 Olive Street
Columbia, SC 29205
803-771-0555
803-771-8010

Columbia, South Carolina
May 28, 2009.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
)
)

PROPOSED
BULK SEWAGE TREATMENT
AND SERVICE AREA AGREEMENT

This Agreement, made and entered into this _____ day of _____, _____, by and between Midland's Utility, Inc. , a South Carolina corporation authorized to do business in the State of South Carolina, ("Midlands" or "Utility") and the Town of Lexington, a political subdivision of the State of South Carolina and a body corporate and politic, ("Town").

WITNESSETH

WHEREAS, Town operates and maintains a sewage collection, transportation and treatment system located both within and without its corporate limits in the State and County aforesaid; and

WHEREAS, Utility operates and maintains a sewage collection, transportation and treatment system serving various subdivisions and areas outside the corporate limits of the Town in the State and County aforesaid; and,

WHEREAS, Town is the Designated Management Agency for wastewater management for a certain area of Lexington County within and without the Town's corporate limits under the provisions of the "208 Water Quality Management Plan" adopted March 25, 2004 ("208 Plan") promulgated by the Central Midlands Council of Governments; and

WHEREAS, under the 208 Plan a portion of the Town Management Area is to be served by UTILITY as shown on Exhibit 1 ("UTILITY Area"); and

WHEREAS, UTILITY has requested that Town provide bulk service to Midlands for the purpose of serving area described (Bulk Service Area), as shown on Exhibit 1; and

WHEREAS, UTILITY desires and is willing to provide sewer service to the Bulk Service Area described as shown on Exhibit 1; and

WHEREAS, UTILITY does not have sufficient treatment capacity for UTILITY to treat the additional wastewater flow which would be generated in the Bulk Service Area and UTILITY will therefore require bulk sewage treatment service for that purpose; and

WHEREAS, the Town is capable of providing bulk sewer treatment service to UTILITY for the purposes described hereinabove; and

WHEREAS, the Town is willing to charge UTILITY for bulk sewage treatment service in a manner equal to and uniform with the manner it charges other bulk service customers of the Town; and

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants set forth hereinafter, UTILITY and the Town agree as follows:

Section I.

Terms and Conditions of Service

1. Town agrees to provide bulk sewage treatment service to UTILITY for wastewater flow generated in the Bulk Service Area described herein on Attachment 1 ("Bulk Service Area") said attachment incorporated herein by reference. The initial charge for this bulk sewage treatment service shall be \$3.45 (Three and 45/100 dollars) per thousand gallons of sewage as metered by the Town through a single, mutually acceptable master meter to be purchased and installed by or on behalf of UTILITY and at no expense to the Town at a mutually acceptable location. This master meter shall, at all times, be subject to applicable standards for operation, maintenance, and accuracy. This rate shall be available for a period of one (1) full year from the date of interconnection of the UTILITY collection and transportation facilities with the Town's transportation facilities, but is subject to change by the Town thereafter pursuant to such procedures as may be binding upon it. The Town shall be entitled to provide its

bulk service to UTILITY utilizing wastewater treatment facilities owned by the Town or utilizing bulk treatment services of third party providers. The Town represents and warrants that it is currently capable of providing bulk treatment service to UTILITY for the described area. It is expressly acknowledged and understood, however, that the availability of bulk treatment service for any part of the Bulk Service Area is contingent and dependent upon the Town's existing, or ability to acquire additional, bulk treatment capacity.

2. The charge provided for in Section I.1, shall be paid by UTILITY to Town monthly, based upon a monthly sewage master meter reading taken by Town. Payment shall be due within thirty (30) days following written notification by Town to UTILITY regarding its monthly determination of sewage flow through the master meter.

3. UTILITY shall, at its expense, transport sewage from the Bulk Service Area to the master meter to the Town for further transportation and for treatment.

4. UTILITY shall, at its expense, maintain such collection lines, pumping stations, transportation lines or mains, and any and all other facilities required to transport the sewage from the Bulk Service Area to the master meter in accordance with the rules and regulations of the South Carolina Department of Health and Environmental Control and all other governmental agencies having jurisdiction over such collection and transportation.

5. The Town will maintain and operate the master meter and its transportation system and will provide sewage treatment in accordance with the rules and regulations of the South Carolina Department of Health and Environmental Control and all other governmental agencies having jurisdiction over such transportation and treatment.

6. As detailed plans are submitted to UTILITY by developers for sewage facilities proposed to be constructed for sewage service in the Bulk Service Area, UTILITY shall forward

a copy of these drawings for the Town's review and approval. This approval will not be unduly withheld and the Town will complete this review process within 30 days of submission of the required documentation by UTILITY. The Town shall pay up to \$50,000 toward the construction of the pump stations, transmission lines and other necessary components needed to provide service to the Bulk Service Area, and shall be repaid through initial tap fees received from Utility.

7. The Town shall monthly submit to UTILITY, and at such other times as the Town and UTILITY shall agree, reports showing the volume of sewage flow, measured in gallons, as recorded by the master meter as provided in Section I.1 above. UTILITY shall have the right of access at all reasonable times to observe, examine, and inspect the master meter. UTILITY shall also have the right to inspect at reasonable times, all books, records, and other information related to bulk sewage flow received by the Town and bulk sewage service charges imposed by the Town therefor.

8. UTILITY shall construct, or cause to be constructed, at no cost to the Town, the interconnection of UTILITY's facilities in the Bulk Service Area to the Town's master meter. This connection shall be subject to supervision, inspection and approval by the Town. The Town agrees that there will be no 'tap fees' or similar charges due from UTILITY to the Town at the time of interconnection, but that UTILITY shall collect and pay to the Town any tap fees due the Town from customers in the Bulk Service Area at such time as they establish service with and from UTILITY. The parties agree that the tap fee charged by the Town shall be \$4,000 (four Thousand and no/100 dollars).

9. The UTILITY collection and transportation system serving the Bulk Service Area shall by Midlands at all times be maintained, operated, and kept in a state of repair which shall

meet all rules and regulations of the South Carolina Department of Health and Environmental Control and all other governmental entities having jurisdiction over it.

10. UTILITY shall be solely responsible for collecting all charges or fees attributable to service within the Bulk Service Area. Its failure to collect any service charges or fees shall not relieve UTILITY from paying to the Town the monthly charges and tap fee charges set forth in this Agreement.

Section II.

Rates and South Carolina Public Service Commission Approval

1. The parties acknowledge that UTILITY will charge its customers for service under UTILITY's rate schedule approved by the South Carolina Public Service Commission ("SCPSC") and in effect from time to time, including provisions authorizing UTILITY to pass-through to its customers on a pro rata basis without markup the costs to UTILITY of receiving the Town's bulk sewage service, including the per gallon charge and any tap or similar fees imposed by the Town and described above. The parties further acknowledge that the terms and conditions of this Agreement must be approved by the SCPSC, including but not limited to, approval of service by UTILITY in the Bulk Service Area.

2. The Town agrees to support and cooperate with UTILITY to secure SCPSC approval of the within Agreement.

3. It is expressly understood by the parties that if SCPSC refuses to grant the necessary approvals for UTILITY to provide service in the Bulk Service Area in accordance with the terms and conditions hereof, then UTILITY shall have no obligation to accept, and the Town no obligation to provide, bulk sewage service in the Bulk Service Area.

4. Notwithstanding anything contained herein, this Agreement shall not constitute an agreement or offer on the part of UTILITY to provide sewage service. The parties acknowledge and agree that the provision of sewer service by UTILITY shall be subject to separate agreement between UTILITY and any person or entity desiring service in the Bulk Service Area, including any property owner, real estate developer, contractor or potential customer.

Section III.

General Provisions

1. In the event UTILITY disputes the accuracy of any master meter reading, it must notify the Town within thirty (30) days of receipt of a billing by the Town. Upon receipt of such notification by UTILITY, the Town will promptly undertake to ascertain, through appropriate calibration testing, whether the master meter is functioning properly in accordance with manufacturer standards and specifications. All master meter readings not disputed within thirty (30) days of UTILITY's receipt of a billing by the Town are final and not subject to any dispute. In the event UTILITY timely disputes a billing by the Town, it shall pay to the Town the disputed amount billed unless other mutually agreeable arrangements are made between the parties. If it is determined that the billing is in error, then UTILITY will be reimbursed by the Town for any difference within thirty (30) days of such a determination. If it is determined that the Town's master meter is not working properly, the Town will be responsible for any repair or replacement costs. In the event of any unresolved dispute concerning the master meter performance, the parties agree to select a mutually acceptable independent testing company qualified to perform appropriate tests on the master meter. The decision of this mutually-selected testing company the master meter performance shall be final and binding upon the parties. If the master meter is determined to be accurate within tolerance ranges acceptable

within the utility industry or to utility regulators, then UTILITY will pay the testing costs. If the master meter is determined to be inaccurate or outside the tolerance ranges, then the Town shall pay for the testing costs.

2. Any notice to be given to any party shall be by certified mail to the addresses shown below. These addresses may be changed by either party giving proper written notice to the other:

TOWN:
Town of Lexington
Post Office Box 397
Lexington, South Carolina 29071
Attn: Jim Duckett, Town Administrator

UTILITY:
Midland's Utility, Inc.
Attn: Ken Parnell
816 East Main Street
Lexington, SC 29072

Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

3. This Agreement is effective for twenty (20) years commencing on the date upon which bulk sewage commences flowing through the master meter.

4. This Agreement may be assigned by either party upon written notice to the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. If either party materially fails or defaults in keeping, performing, or abiding by these Agreement terms and provisions, then the non-defaulting party shall give written notice to the defaulting party specifying the nature of the default. If the defaulting party does not cure the

default within thirty (30) days after the date of written notice, then this Agreement, at the option of the non-defaulting party, shall terminate. Neither party shall be relieved of liability to the other for damages sustained by virtue of any party wrongfully exercising this provision. This paragraph is not intended to replace any other legal or equitable remedies available to any non-defaulting party under South Carolina law, but it is in addition thereto.

6. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.

7. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

8. This Agreement sets forth the complete understanding between UTILITY and the Town and no prior agreements or communications, whether oral or written, shall be deemed a part hereof. Any amendments hereto to be effective must be made in writing and signed by the

parties hereto.

9. This Agreement shall be governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed and have been duly authorized by their respective governing bodies on the date above first written.

Town of Lexington

By: _____
Its: _____

Witness/Attest:

1) _____
2) _____

Midland's Utility, Inc.

By: _____
Its: _____

Witness/Attest:

1) _____
2) _____

EXHIBIT B

MAYOR
T. Randall Halfacre

MAYOR PRO-TEM
Flazel Leggett-Tyndall

COUNCIL
Richard D. Thompson
Kathy Maness
Ted Stambolitis
Danny Frazier
Todd Shevchik

TOWN OF LEXINGTON

111 Maiden Lane



TOWN ADMINISTRATOR
James W. Duckett, Jr.

MAILING ADDRESS
Post Office Box 297
Lexington, SC 29071

INFORMATION
803-359-4164
www.lexsc.com

FAX
803-359-4460

May 28, 2009

Keith G. Parnell, President
Midland's Utility, Inc.
816 East Main Street
Lexington, SC 29072


Dear Mr. Parnell:

I am writing to you concerning the proposal to provide sewer service to the parcel of property just east of Interstate 20, and on the north side of U.S. Highway 378 east of the Town of Lexington. Based upon conversations between Town of Lexington council members and staff, it is my understanding a proposal to provide sewer service to this property acceptable to all parties would be as follows:

- The proposed parcel is located within the Town of Lexington's designated wastewater management area and within the Midland's Utility Service area as shown on the 208 Water Quality Management Plan maps on file with the Central Midlands Regional Council of Governments. The proposed parcel would consist of several businesses that require sewer service, but Midland's Utility does not currently have treatment capacity available to handle this flow.
- The Town is willing to enter into an agreement to sell bulk sewer capacity to Midland's Utility, Inc., for the price of \$3.45 per one thousand (1,000) gallons to serve the proposed subdivision.
- Midland's Utility is willing to file with the Public Service Commission an application for approval to serve this property pursuant to the terms of the bulk service agreement with the Town. Potential developers may also need to enter into an agreement with Midland's Utility which will contain other terms and conditions to be negotiated between Midland's and the prospective developer(s).

The Town supports this application, and believes this proposal would be beneficial not only to Midland's Utility, Inc., and the Town of Lexington, but to the potential business owners involved. Please feel free to contact me should you have any questions.

Sincerely,



T. Randall Halfacre, Mayor
Town of Lexington